

## Office of Solid Waste and Emergency Response

### Response to Key Comments on Draft FY 2008 NPM Guidance

All comments received were provided to OSWER's program offices for meaningful consideration.

Source of Comment	Comment	Response
States Environmental Results Program Consortium	In the UST Compliance Act of 2005, Congress did not specify what action EPA was to take if states did not meet the August 8, 2007 deadline and the every three years inspection requirements, leaving EPA with flexibility through the grant process to work with States on the means and timing of compliance with the requirements. Therefore, the States ERP Consortium believes the EPA Office of Underground Storage Tanks guidance is unnecessarily inflexible, and should be revised to allow for various implementation options for the inspections, including ERP, third-party inspections, desk audits with site visits, or other tools to meet the inspection requirements. Further, if a state begins but can't complete implementation of initial inspections prior to the August 8, 2007 deadline, EPA regions and states should be able to negotiate schedules of compliance allowing states to satisfy the inspection requirement at an agreed-upon date, using the various tools mentioned above.	<p>Section 1523 of the Energy Policy Act of 2005 requires EPA or States that receive Subtitle I funding, as appropriate, to conduct on-site inspections of all UST systems to determine compliance with federal requirements under Subtitle I or state requirements for states with State Program Approval.</p> <p>The approach suggested by the States ERP Consortium would not meet the "on-site" requirement contained in the Act. Third Party Inspection Programs may be used to meet this requirement as long as they meet the minimum requirements in the soon to be released Inspection Guidelines. An on-site inspection combined with activities that are not on-site (such as paperwork review or desk audits) would also be allowed to meet the inspection requirement as long as the minimum requirements are met in the soon to be released Inspection Guidelines.</p> <p>Should Congress enact new</p>

**Office of Solid Waste and Emergency Response**  
**Response to Key Comments on Draft FY 2008 NPM Guidance**

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		legislative language allowing the use of alternative mechanisms such as those suggested by the ERP, we will revise the inspection guidance to include the new allowable uses.
New England States' Environmental Commissioners	OSWER should consider how it can best support mercury reduction programs under the National "Roadmap for Mercury" and provide support to the states to reduce mercury in solid wastes and improve emergency response and capacity for mercury spills.	While OSWER's Resource Conservation Challenge, emergency response and cleanup programs play an important role in reducing or cleaning up mercury contamination, targeted efforts under this initiative have not been defined.
Commonwealth of Pennsylvania	If states are to carry out the various requirements of the Underground Storage Tank Compliance provisions of the Federal Energy Policy Act of 2005, Congress should appropriate additional and significant Leaking Underground Storage Tank (LUST) Trust Fund and State and Tribal Assistance Grant (STAG) dollars. There is no indication in the guidance that the needed dollars are coming to the states.	Specific funding allocations are addressed during the actual fiscal year after Congressional appropriations are completed.
	The guidance indicates that states must report Mid-Year performance data on or before April 5 of each year. Last summer, EPA asked Pennsylvania to amend their FFY 2007 UST and LUST grants to provide the data by April 15. If EPA now needs the data before April 15, Pennsylvania requests that the guidance be revised to indicate that the Mid-Year performance data be provided on or before the 5th working day following the end of the mid-year (which is March 31).	States should adhere to the dates specified in their state grant agreements for submitting mid-year performance data.
	The guidance indicates that states must report final End-of-Year performance data on or before October 1 of each year. Last	End-of-year due dates for performance data have been

**Office of Solid Waste and Emergency Response**  
**Response to Key Comments on Draft FY 2008 NPM Guidance**

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	summer, EPA asked Pennsylvania to amend their FY 2007 UST and LUST grants to provide the data by October 15. If EPA now needs the data before October 15, Pennsylvania requests that the guidance be revised to indicate that the final End-of-Year performance data be provided on or before the 5th working day following the end of the end-of-year (which is September 30). Reporting final End-of-Year performance data on or before October 1 is unreasonable, giving states less than 1 day to compile and report the information to EPA.	modified.
Region 3	Most regions do not target facilities that are in compliance. Our mission is to bring facilities into compliance; therefore, we target facilities that have been identified as having potential issues. These facilities may come to our attention by way of release reports, State or local agency referrals, citizen complaints, etc. Therefore, having a facility in compliance at the time of inspection will be highly unlikely if our targeting strategy continues to concentrate on facilities that have potential issues. It is more realistic for us to evaluate and measure facility compliance within the reporting year. It allows our inspectors to work with the facilities to help them come into compliance or inform them they face enforcement actions. Our program should not be targeting facilities that are already in compliance, as those facilities have already undertaken the efforts specified within the regulations to prevent spills.	OSWER recently reached agreement with OMB to reduce its FY 2007 and FY 2008 targets for its FRP and SPCC compliance measures. This agreement commits EPA to determine each facility's compliance with FRP and SPCC regulations at the time of inspection (rather than coming into compliance later in the year). EPA may conduct compliance assistance activities in advance of inspections to help bring facilities into compliance.
	Oil: Compliance rate of inspected facilities subject to SPCC regulations (the initial target of 100% was revised to 55% based upon the new national policy on the definition of 'compliance' and new baseline numbers for 2006) and	See response above.

**Office of Solid Waste and Emergency Response  
Response to Key Comments on Draft FY 2008 NPM Guidance**

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	<p>Oil: Compliance rate of inspected facilities subject to FRP regulations (the initial target of 100% was revised to 78% based upon the new national policy on the definition of 'compliance' and new baseline numbers for 2006)</p> <p><u>Comment:</u> The measures should really center on how EPA addresses facilities that are out of compliance. We propose doing this by measuring the percentage of facilities that are in compliance or come into compliance within the reporting year of the inspection. By measuring the program this way, you are insuring that EPA is not doing "inspection blitzes" but actually following through with its inspections, whether it be enforcement or intense compliance assistance. Region III recommends that the measure be worded this way: "Percentage of facilities that are in compliance or come into compliance as a result of an inspection." We can use the percentages from FY 2006 as a baseline target.</p>	
	Region III suggests the goal be modified to ... Number of Risk management audits/ <b>inspections</b> completed (target 400).	Made requested adjustment to Guidance.
	The guidance clearly indicates the high priority Superfund activities and focus areas for FY 08, but it fails to recognize the activities we will need to “dis-invest” in order to apply the increased resources/commitments to achieve the high priority activities. Resources are stretched very thin and with the projected resource reductions, we will have to scale back in some existing activity areas. The National Guidance should recognize this and address in the narrative.	Annual funding discussions for the Superfund program are addressed during the annual workplanning discussions.
Region 5	Both the OSWER and Office of Enforcement and Compliance Assurance (OECA) draft FY 2008 NPM Guidances say that the	Added discussion of Superfund enforcement priorities to the text of

**Office of Solid Waste and Emergency Response**  
**Response to Key Comments on Draft FY 2008 NPM Guidance**

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	enforcement aspects of the Superfund program are covered in the OSWER guidance, and the two OSRE measures are listed in the OSWER measures appendix; however, there is no discussion of the Superfund enforcement program in the OSWER guidance	the Guidance.
	<p>On page 10, the guidance states "cleanup and response work at contaminated sites remains the top priority of the Superfund Remedial and Federal Facilities programs;" however, cleanup work at remedial sites isn't mentioned in the Program Priorities section on pages 1 and 2.</p> <p><u>Suggested Text</u></p> <p>If the "Revitalization" bullet on pages 1 and 2 is intended to cover both response and any accompanying revitalization work, we suggest that the bullet be reworded "Response and Revitalization." Otherwise, we suggest that a separate bullet be added for the important remedial response work that we do.</p>	<p>The priorities outlined in this section are consistent with those described in EPA's FY 2008 budget request. Cleanup efforts are explicitly discussed under the Revitalization bullet.</p>
	<p>The Regional Priorities section doesn't mention the Superfund measure in the Midwest's Lead Poisoning Select Regional Priority (i.e., number of lead-contaminated residential properties restored by Superfund).</p> <p><u>Suggested Text</u></p> <p>To include it, the last paragraph of this section could be revised to say "There are two measures in support of the U.S.-Mexico Border priority and one in the Midwest Lead Poisoning priority that are not mentioned in this guidance . . . ."</p>	<p>The text has been modified to reference the Midwest's lead poisoning priority work.</p>
	<p>(NOTE: This comment is also in the OECA section above.)</p> <p>Resolve the concern raised by all ten regions and the lead region that there is no longer a national measure for PRP-lead removal completions, and address the issue in the final guidance. When this issue was brought up again during the Measures Streamlining Initiative, OSWER responded that they had</p>	<p>OSWER has incorporated OECA's enforcement removal measure in its measures appendix, as requested.</p>

**Office of Solid Waste and Emergency Response  
Response to Key Comments on Draft FY 2008 NPM Guidance**

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	referred the topic to OECA, but we have not heard of any resolution to this issue to date and the measure doesn't appear in the OECA draft guidance. PRP-lead removals was a national measure for years that was suddenly dropped within the past year or two. Reporting only fund-lead removals and voluntary removals without the PRP-lead removals leaves out a large part of our accomplishments--and the category that we have been told for years is the one we should be focusing on.	
	The first sentence on Page 17 describes the emergency preparedness measure in the old Strategic Plan, not the new measures in the 2006-2011 plan, which requires that each region maintain at least 95% of the Core ER maximum score. The measures appendix also contains the old language for the Core ER measure. The language in both locations should be updated to match the current Strategic Plan text.	Updated annual Core ER measure text, as requested.
	This section gives a definition for oil facility compliance and mentions the "new national policy on the definition of compliance," but we were recently told that the definition has not yet been agreed upon. Is this, in fact, the final definition or should this sentence be reworded?	This is the final definition.